

Request For Rehearing After Board Decision

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Dated: July 28, 2011

Electronic Signature for Charles A. Bieneman: /Charles A. Bieneman/

Docket No.: 03-4027
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Michael A. Dean

Confirmation No.: 5673

Application No.: 10/803,551

Art Unit: 2159

Filed: March 18, 2004

Examiner: Pham, Hung Q.

For: METHODS AND APPARATUS FOR
FOCUSING SEARCH RESULTS ON THE
SEMANTIC WEB

REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant submits this Request for Rehearing under 37 C.F.R. § 41.52 in response to the Decision on Appeal (hereinafter "Decision") issued by the Board of Patent Appeals and Interferences (hereinafter "Board") on June 3, 2011. This Request for Rehearing is timely filed within the two-month time period for reply set forth under 37 C.F.R. § 41.52(a)(1).

This Request for Rehearing concerns the affirmance of the Examiner's rejection of claims 1-15 under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 6,038,560 to Wical.

In affirming the Examiner's rejection of claims 1-15 under 35 U.S.C. § 102(b), Appellants respectfully submit that points of law and fact were overlooked or misapprehended by the Board. Appellants will specifically identify these points below.

I. STATEMENT OF THE CASE

All pending claims of the present application were finally rejected in the Office action mailed April 20, 2007.

In that Final Office Action, claims 1-15 were rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 6,038,560 (“Wical”)

Appellant appealed the Examiner’s Final Office Action. (See generally Appeal Brief dated September 14, 2007; hereinafter “Appeal Brief”). The Board has jurisdiction over this appeal pursuant to 35 U.S.C. § 6(b).

After consideration of Appellants’ Appeal Brief, the Examiner’s Answer, and Appellants’ Reply Brief, the Board issued the Decision, which affirmed the Examiner’s rejection of claims 1-15 under 35 U.S.C. § 102(b), as allegedly anticipated by Wical.

This Request for Rehearing asks the Board to reconsider its affirmation of the rejection of claims 1-15 under 35 U.S.C. § 102(b), as allegedly anticipated by Wical.

II. STANDARD OF REVIEW

Decisions by the Board must be issued in accordance with the standards of the Administrative Procedure Act. *Zurko v. Dickinson*, 527 U.S. 150, 158, 119 S.Ct. 1816, 1821, 50 USPQ2d 1930, 1934 (1999). Findings of fact relied upon by the Board must be supported by “substantial evidence” within the record. *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d 1769, 1775 (Fed. Cir. 2000). The “substantial evidence” standard means “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389 (1971).

The Federal Circuit instructs that the Board, acting as an agency tribunal, “must present a full and reasoned explanation of its decision” and “must set forth its findings and the grounds thereof, as supported by the agency record, and explain its application of the law to the found facts.” *In re Lee*, 277 F.3d 1338, 1340, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Thus “the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for [appellate] review.” *Gechter v. Davidson*, 116 F3d 1454, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997).

The Board is a board of review and not a vehicle for initial examination. *See* 35 U.S.C. §6(b). The burden is on the examiner to set forth a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In the precedential opinion of *Ex parte Frye*, the Board explained it reviews rejections “for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon,” stating:

Our decision is limited to the finding before us for review. The Board does not “allow” claims of an application and cannot direct an examiner to pass an application to issuance. Rather, the Board’s primary role is to review adverse decisions of examiners including the findings and conclusions made by the examiner.

Ex parte Frye, Appeal 2009-006013, February 26, 2010, at 8, ll. 18–20 and p. 15, ll. 3–7 (emphasis added). Accordingly, decisions by the Board are limited to the findings and conclusions made by the examiner, and the Board “reviews the particular finding(s) contested by an appellant anew in light of all the evidence and argument on that issue.” *Id.*, at 10, ll. 2–4.

Rehearing of a decision on appeal issued by the Board may be sought under 37 C.F.R. § 41.52. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. 37 C.F.R. § 41.52(a). Absent a new grounds of rejection in a decision on appeal, arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs are not permitted in the request for rehearing except a new argument based upon a recent relevant decision of either the Board or a Federal Court, upon a showing of good cause by appellant. *Id.*

III. THE BOARD’S FINDINGS OF FACT AND APPLICATION OF LAW

In the Final Office Action of April 20, 2007, the Examiner rejected claims 1-15 under 35 U.S.C. § 102(b), as allegedly anticipated by Wical. In the Decision, the Board concluded that:

(1) Wical discloses “semantic Web structured resources” as recited in independent claims 1, 5, 8, and 12. Decision, at 5-6;

(2) Wical discloses “parsing statements from at least one Semantic Web structured resource to identify component words” as recited in independent claim 1, and also discloses similar recitations in independent claims 5, 8, and 12. Decision, at 6-7;

(3) Wical discloses “constructing an index from said component words, said index relating said component words to said statements,” and also discloses similar recitations in independent claims 5, 8, and 12. Decision, at 7.

(4) Wical discloses “obtaining predicates, instances, types of said instances, and literal values of said related ones of said statements; and summarizing said predicates, instances, types, and literal values for presentation to a user as said search results,” and also discloses similar recitations in dependent claim 6, and independent claims 8 and 12. Decision, at 7-8.

(5) Wical discloses “gathering statements from said identified Semantic Web structured resources . . . [and] . . . presenting said gathered statements for parsing,” has recited independent claim 3, and also discloses similar recitations in dependent claims 10 and 14, and independent claim 5. Decision, at 8.

(6) Wical discloses “arranging said predicates, instances, types, and literal values into one or more graphical representations,” as recited in claim 2, and also discloses similar recitations in dependent claims 4, 7, and, and 13, and 15. Decision, at 8-9.

For reasons detailed in the next Section, Appellants respectfully request the Board to reconsider conclusions (1), (2), (4), (5), and (6).

IV. ARGUMENTS

A. The Board Erred in Concluding That Wical Anticipated “Semantic Web structured resources.”

The Board erred in ignoring Appellants’ argument that “documents processed by Wical are clearly not processed as ‘structured resources’ at all because Wical processes a document irrespective of the document’s structure, or lack of structure.” (Appeal Brief, at 20.)

The Board adopted the Examiner’s construction that a “‘Semantic Web structured resource’ encompasses any structured resource, available on the Internet, that is a compilation of information. (Decision, at 5, *citing* Examiner’s Answer, at 7.) The Board then concluded that Wical’s “documents are Semantic Web structured resources and terms are parsed from the documents to generate themes as statements from the document.” The Board went on to state that it found unpersuasive Appellants’ argument (Appeal Brief, at 19, lines 17-24) that “Wical’s description of the analysis of the semantic, contextual, and stylistic aspects of documents renders Semantic Web structured resources unnecessary.” (Decision, at 6.)

However, the Board did not at all address Appellants' argument (Appeal Brief, at 20, lines 1-3) that Wical's documents "are clearly not processed as 'structured resources' at all because Wical processes a document irrespective of the document's structure, or lack of structure." As the Appeal Brief (at 20, lines 6-7) further explained, "Wical teaches accepting data from various documents, and extracting theme information, regardless of the documents' structure." The Board did not explain how Wical could be read as disclosing processing of "structured" documents if Wical disclosed processing different types of documents that would have been formatted differently, and not according to any structure. Appellants respectfully submit that no such explanation is possible, and that Wical's disclosure of extracting theme information from many different types of documents demonstrates that Wical cannot teach or suggest the "structured resources" recited in Appellants' claims. The Board erred in overlooking this argument.

Further, the Board erred in basing its conclusion on a supposed finding that Wical's "knowledge base includes compilations of information in the form of documents that have theme vectors that include terms." (Decision, at 5.) In fact, as the Board stated in its Finding of Fact 2, Wical discloses a "content processing system" that "analyzes the thematic, contextual, and stylistic aspects of the document and generates a document theme vector." (Decision, at 4.) As the Board also found, Wical "associate[s] conceptual themes to terms of the knowledge base using inferences and learning." In other words, according to the Board's own findings, Wical discloses theme vectors that are generated from documents, and does not teach or suggest documents that have theme vectors. Therefore, the Board plainly erred in its conclusion that Wical disclosed "structured resources" based on the Board's erroneous supposition that Wical's "knowledge base includes compilations of information in the form of documents that have theme vectors that include terms." Because the Board used this finding as a basis for concluding that Wical disclosed a "Semantic Web structured resource," the Board erroneously upheld the Examiner's rejections.

At least for the foregoing reasons, reconsideration and reversal of the Examiner's rejection of claims 1, 5, 8, and 12 is respectfully urged.

B. The Board Erred in Concluding That Wical Anticipated "component words."

Claim 1 recites "parsing statements from at least one Semantic Web structured resource to identify component words." Claims 5, 8, and 12 include similar recitations. The Board stated that

“the themes developed for each document and the organization and categorization of the themes are component words that are identified from the statements.” (Decision, at 6-7; emphasis added.) Thus, the Board’s conclusion that Wical included a recitation of “component words” in claims 1, 5, 8, and 12, was erroneous on its face because the Board stated that “component words” were anticipated by both document themes and “the organization and categorization of the themes,” where the Board did not explain how it was possible for a single element (i.e., “component words”) to be two distinct things, i.e., a document theme as well as the organization and categorization of the theme.

At least for the foregoing further reasons, reconsideration and reversal of the Examiner’s rejection of claims 1, 5, 8, and 12 is respectfully urged.

C. The Board Erred in Concluding That Wical Anticipated “constructing an index from said component words . . .”

Claim 1 recites “constructing an index from said component words, said index relating said component words to said statements.” The Board erred in concluding that Wical’s “categorization, classification, and organization of themes in a hierarchical format any knowledge base is the same as an index relating component words to statements.” (Decision, at 7.) As the Board stated, “Wical describes categorizing and classifying the themes of documents and arranging the classifications in a hierarchical structure in a knowledge base. FF 02.” (Decision, at 7.) That is, Wical’s classification system simply presents categories in a hierarchy. (Wical, Figure 9C.) Accordingly, Wical’s “categorization, classification, and organization of themes in a hierarchical format and a knowledge base,” is not “the same as an index relating component words to statements,” as the Board concluded (Decision, at 7), because Wical’s hierarchical classification scheme simply relates categories in the hierarchy to one another, and not to “statements” in one of Wical’s documents.

At least for the foregoing further reasons, reconsideration and reversal of the Examiner’s rejection of claims 1, 5, 8, and 12 is respectfully urged.

D. The Board Erred in Concluding That Wical Anticipated “obtaining predicates, instances, types of said instances, and literal values . . .”

Claim 1 recites “obtaining predicates, instances, types of said instances, and literal values of said related ones of said statements; and summarizing said predicates, instances, types, and literal

values for presentation to a user as said search results.” Dependent claim 6 as well as independent claims 8 and 12 include similar recitations. The Board erroneously concluded that “Wical describes obtaining predicates, instances, types of instances, and literal values.” (Decision, at 8.)

For example, the Board, citing Wical’s Figure 3, stated that “Wical associates the literal value of ‘2’ with ‘Gaming Industry.’” However, Wical clearly explains that the “2” shown in Figure 3 indicates that “two documents were classified in the category ‘gaming industry.’” Therefore, the “2” is blatantly not a “literal value of said related ones of said statements.” Reconsideration and reversal of the Examiner’s rejection is warranted for at least this reason alone.

Furthermore, the Decision entirely failed to address the argument in the Appeal Brief (at 24, lines 17-20) that “even if Wical’s theme elements read on all the ‘instances, types of said instances, and literal values of said related ones of said statements,’ and ‘statements’ recited in the claims, Wical still would not teach or suggest ‘summarizing said predicates, instances, and types, and literal values for presentation to a user as said search results.’” As explained in the Appeal Brief (at 24, lines 22-25), “Appellants’ claims recite summarizing statements extracted from web resources, whereas Wical discloses at most grouping links to various documents,” but “does not summarize actual statements – or any data – in the given documents.” The Board’s failure to give proper weight to this argument resulted in the Board’s erroneous failure to reverse the Examiner’s rejection.

In addition, citing Wical’s Figure 3, the Board stated that “for a query including ‘Legal,’ ‘Betting,’ and ‘China,’ the system generates subjects for each of the terms, such as ‘Government,’ ‘Casino,’ and ‘Asia’ and an overall subject such as ‘Gaming Industry.’” (Decision, at 8.) However, the Board erroneously overlooked Wical’s disclosure that “for the embodiment shown in FIG. 3, the documents which include information on the corresponding terms, are presented at relative to classification system.” (Wical, column 10, lines 14-16.) In other words, the different categories in Wical’s classification scheme are at most subjects related to one another in a hierarchical fashion. Therefore, the Board erred in concluding that Wical disclosed “predicates, instances, types of said instances, and literal values of said related ones of said statements,” much less “summarizing said predicates, instances, types, and literal values.”

For least the foregoing reasons, the rejections of claims 1, 6, 8, and 12 should be reconsidered and reversed.

E. The Board Erred in Concluding That Wical Anticipated “. . . presenting said gathered statements for parsing.”

Claim 3 depends from claim 1 and recites “gathering statements from said identified Semantic Web structured resources . . . [and] . . . presenting said gathered statements for parsing.” claims 5, 10, and 14 include similar recitations. Although Appellants presented separate arguments for these claim recitations (Appeal Brief, at 25-26), the Board simply stated that Appellants arguments were “similar to the argument *supra* regarding Wical’s description of parsing statements to identify component words,” and found Appellants’ “arguments unpersuasive for the same reasons.” (Decision, at 8.) Thus, the Board overlooked Appellants’ arguments that Wical discloses processing each of its documents in its entirety, and that “in Wical each document is parsed and processed as a whole, not as a series of statements.” (Appeal Brief, at 25.)

Further, the Board ignored a crucial difference between Wical’s documents and the Semantic Web structured resources of the present invention. Specifically, as explained in the Appeal Brief (at 25) the present invention “provides an alternative to simply collecting and indexing entire on structured resources” because “Semantic Web resources can provide information in a structure that describes and separates the portions of the resource . . . using specific, associated statements.” Had the Board properly paid heed to this difference, the Board could not have found that Wical disclosed “gathering statements from said identified Semantic Web structured resources . . . [and] . . . presenting said gathered statements for parsing.”

For least the foregoing reasons, the rejections of claims 3, 5, 10, and 14 should be reconsidered and reversed.

V. CONCLUSION

In light of the foregoing remarks, Appellant respectfully requests that the Board reconsider and reverse the Examiner's rejection of claims 1-15 under 35 U.S.C. § 102(b).

Dated: July 28, 2011

Respectfully submitted,

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